

FOR STATE USE ONLY
DGS REGISTRATION NO.

CALIFORNIA'S NONPOINT SOURCE POLLUTION CONTROL PROGRAM
FEDERAL CLEAN WATER ACT SECTION 319(h) GRANT
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

[insert name of Grantee], hereinafter called "Grantee"

[insert name of Project], hereinafter called "Project"

AGREEMENT NO. []

State and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Grant Agreement:
Clean Water Act (CWA) § 319(h) – Nonpoint Source Implementation

PURPOSE. State shall provide a grant to and for the benefit of Grantee for the purpose of [].

FUNDING. Funds for this Project were provided by a federal grant (Cooperative Agreement No. **INSERT EPA AGREEMENT NUMBER**) from the United States Environmental Protection Agency (USEPA) to the State Water Board to implement California's Nonpoint Source Program pursuant to CWA Section 319(h).

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$<INSERT AMOUNT>. Stream Reach affected by the Project for any monitoring must be identified prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on (date) and continue through Project completion plus three (3) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY DECEMBER 31, []. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER FEBRUARY 1, 200X.

PROJECT REPRESENTATIVES. The Project Representatives during the term of this Agreement will be:

State Water Board	Grantee:
Name: name, Grant Manager	Name: name, Project Director
Address:	Address:
City, Zip:	City, Zip:
Phone:	Phone:
Fax:	Fax:
e-mail:	e-mail:

Direct all inquiries to:

State Water Board	Grantee:
Section: Division of Financial Assistance	Section:
Attention: name, Program Analyst	Name: name, Grant Contact
Address: 1001 "I" Street, 17 th Floor	Address:
City, Zip: Sacramento, CA 95814	City, Zip:
Phone: (916) 341-XXXX	Phone:
Fax: (916) 341-5296	Fax:
e-mail: name@waterboards.ca.gov	e-mail:

Either party may change its Project Representative upon written notice to the other party.

STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- | | |
|-----------|---|
| Exhibit A | SCOPE OF WORK |
| Exhibit B | INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS |
| Exhibit C | GENERAL TERMS & CONDITIONS |
| Exhibit D | SPECIAL CONDITIONS |

GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By: _____
Grantee Signature

By: _____
Barbara L. Evoy, Deputy Director
State Water Resources Control Board,
Division of Financial Assistance

Grantee Typed/Printed Name

Date

Title and Date

Reviewed by:
Office of Chief Counsel
Date:

EXHIBIT A
SCOPE OF WORK

A. PLANS AND COMPLIANCE REQUIREMENTS

1. In order for the State and Regional Water Quality Control Board (Regional Water Board) staff to verify work was adequately performed or conducted, Stream Reach affected by the Project must be identified prior to any disbursements.
2. The Grantee shall prepare and implement a Project Assessment and Evaluation Plan (PAEP) to detail the methods of measuring Project benefits and reporting them in accordance with a PAEP. Many projects include multiple activities that will require measurement of several parameters to evaluate Project performance. All implementation projects that propose pollution load and/or concentration reductions must report such reductions annually. Annual load/concentration reduction reports shall be uploaded by the Grantee to the FFAST system. Use the 319(h) Non Point Source Pollution Reduction Project Follow-up Survey Form found at http://www.waterboards.ca.gov/funding/docs/grantinfo/319h_pollution_survey.xls or a similar format to report annual load reductions. Projects protecting, restoring or creating streams, shorelines, or wetlands, must report an annual accounting of the acres of wetlands restored and created, feet of stream bank and shoreline protected and feet of stream channel stabilized. Grantee shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Grant Manager. The Grantee shall upload a pdf version of the final approved PAEP to the FFAST system. Guidance for preparing the PAEP is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/paep/index.shtml.
3. If environmental water quality monitoring (chemical, physical, or biological) is undertaken, the Grantee shall prepare, maintain, and implement a Monitoring Plan (MP). The Grantee shall upload a pdf version of the final approved MP to the FFAST system. The MP shall include, but is not limited to, a description of the monitoring objectives, types of constituents to be monitored, and the sampling location frequency/schedule for the monitoring activities. The MP will include the schedule for submittal of monitoring reports. The Grantee shall be prohibited from implementing any sampling or monitoring activities prior to approval of the MP by the Grant Manager. No monitoring may occur prior to MP approval. Any changes to the MP must be submitted to the Grant Manager for review and a decision regarding approval prior to implementation.
4. If an MP is prepared, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01. Water quality monitoring data includes physical, chemical, and biological monitoring of any surface water. Electronic submittal of data collected in accordance with SWAMP shall be required. The QAPP shall be submitted to the State or Regional Water Board's Quality Assurance (QA) Officer for review and a decision regarding approval prior to the Grantee implementing any sampling or monitoring activities. The Grantee shall upload a pdf version of the final approved QAPP to the FFAST system. No monitoring may occur prior to QAPP approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance for preparing the QAPP is available at http://www.waterboards.ca.gov/water_issues/programs/swamp/qapp.shtml.
5. Activities supported by grant funds are projects under the California Environmental Quality Act (CEQA) and must comply with CEQA requirements. Work on the Project cannot begin until the State Water Board has reviewed the CEQA documentation submitted by the Grantee and given environmental clearance. If the work is conducted on federal land, the Grantee must also comply with the National Environmental Policy Act (NEPA).
6. If landowner agreements are required, signed copies must be submitted to the Grant Manager before works begins.
7. If permits are required, the permits must be obtained and signed copies submitted to the Grant Manager before work begins.

8. State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board and the U.S. Environmental Protection Agency under the Federal Nonpoint Source Pollution Control Program (Clean Water Act Section 319). The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.” (Gov. Code, § 7550, 40 C.F.R. § 31.20)

The Grantee shall place a sign at in a prominent location at Project site (if applicable) or at the Grantee's headquarters and shall include the following color logo:



(logo available from the Grant Manager), and the following disclosure statement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board and the U.S. Environmental Protection Agency under the Federal Nonpoint Source Pollution Control Program (Clean Water Act Section 319).”

The Project sign may include another agency's required promotional information so long as the above logo and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner. Additionally, the required contents of the sign (logo and disclosure statement) shall be posted on the Grantee's website or any of the Grantee's web page(s) associated with the Project.

9. The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this work item. (Gov. Code, § 7550)

B. WORK TO BE PERFORMED BY GRANTEE

The State Water Board Program Analyst inserts detailed scope of work. Be as specific as appropriate for the Project being funded. The scope must be consistent with the proposed scope contained in the application and the required revisions identified during the review process. Do not include purely speculative statements or purely historical statements. For example, say "Grantee shall perform restoration work from X stretch of creek to Y stretch of creek. Such work will include removal of exotic flora (including X plant, if known)", etc. DON'T SAY "Grantee is concerned about invasive flora in the watershed. This type of flora hurts the habitat for aquatic species." What we want to know is WHAT THE GRANTEE IS ACTUALLY GOING TO DO.

- 1.

TABLE OF ITEMS FOR REVIEW
[this is only a sample, edit as needed]

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	PLANS AND COMPLIANCE REQUIREMENTS		
1.	Stream Reach for Project site and monitoring locations	Day 90	
2.	Project Assessment and Evaluation Plan (PAEP)	Day 30	
	Non Point Source Pollution Reduction Project Follow-up Survey Form		Annually by 12/15
3.	Monitoring Plan (MP)	Day 90	
	Monitoring Reports		Quarterly/Monthly
4.	Quality Assurance Project Plan (QAPP)	Day 90	
5.	Copy of final CEQA/NEPA Documentation	Date required	
6.	Land Owner Agreement(s)		
7.	Applicable Permits		
B.	WORK TO BE PERFORMED BY GRANTEE		
1.	{Title of work item to be reviewed}		(date)
a.	{Name of item to be reviewed}		(date)
b.	{Name of item to be reviewed}		(date)
EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	INVOICING		Quarterly/Monthly
E.	REPORTS		
1.	Progress Reports by the twentieth (20 th) of the month following the end of the calendar quarter (March, June, September, and December) delete if monthly		Quarterly/Monthly
2.	Natural Resource Projects Inventory (NRPI) Project Survey Form	Before final invoice	
3.	Draft Project Report	(date)	
4.	Final Project Report	(date)	
5.	Final Project Summary	Before final invoice	
EXHIBIT D – GRANT PROGRAM TERMS & CONDITIONS			
1.	Lobbying Certification		With final report
2.	MBE/WBE Documentation (http://www.epa.gov/osdbu/pdfs/5700_52a.pdf)	- -	Quarterly

EXHIBIT B
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICING

1. Invoices shall be submitted using the invoice template provided by the State Water Board. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to the State Water Board's Grant Manager on a (choose one) monthly/quarterly basis consistent with the reporting schedule in Section E.1 of this exhibit. The address for submittal is:

Name, Grant Manager
Regional Water Quality Control Board
Address
City, CA Zip
2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds as well as to support matching funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e. hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
6. Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - a. The Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - b. The Grantee fails to maintain reasonable progress toward completion of the Project.
7. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.

8. The invoice shall contain the following information:

- a. The date of the invoice;
- b. The time period covered by the invoice, i.e., the term "from" and "to";
- c. The total amount due; and
- d. Original signature and date (in ink) of Grantee or its authorized representative.
- e. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN FEBRUARY 1, 200X.

B. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 200X-XX fiscal year ending June 30, 200X shall not exceed TYPE OUT DOLLAR AMOUNT (ALPHA) (\$NUMERIC).

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Grantee to reflect the reduced amount.

C. LINE ITEM BUDGET

		319(h)	MATCH	TOTAL
Personnel Services		\$	\$	\$
Classification	Hours	Wage/Hour		
Principal Engineer	##	\$xx.xx		
Senior Engineer	##	\$xx.xx		
Operating Expenses (Prorated for Project)		\$	\$	\$
Includes:				
Travel Expenses				
Supplies (less than \$5,000 per item)				
Equipment (\$5,000 or more per item)		\$	\$	\$
Itemize each piece of equipment				
Professional and Consultant Services		\$	\$	\$
Construction (Contracted Services)		\$	\$	\$
TOTAL		\$	\$	\$

Comment [S1]: Page: 7
If no match is required, delete both the "Match" column and the "Total" column.

Comment [S2]: Page: 7
If no match is required, delete both the "Match" column and the "Total" column.

Comment [S3]: Page: 7
Line Item descriptions listed below are shown as examples. Leave out any items that do not apply. The combination of grant funds and match must equal the total hours x wage for all staff included on the budget.

Comment [S4]: Page: 7
These people must be employed by the Grantee. If preparation of CEQA/NEQA/QAPP documents or construction services is done by the Grantee's EE, then costs are included in the hours/total)

Comment [S5]: Page: 7
List items. If item described as "equipment" must be followed by: "(less than \$,5000)"

Comment [S6]: Page: 7
List type of services contracted out and contracting agency, if known (e.g., lab work, QAPP development, CEQA/NEPA, application permits, etc.)

D. BUDGET LINE ITEM FLEXIBILITY

1. Line Item Adjustment(s). Subject to the prior review and approval of the State Water Board's Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total grant amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.
2. Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the State Water Board. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The State Water Board may also propose adjustments to the budget.
3. Remaining Balance. In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Grantee stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

E. REPORTS

1. PROGRESS REPORT. Grantee shall submit (choose either) quarterly/monthly progress reports to the State Water Board's Grant Manager by the twentieth (20th) of the month (delete if monthly, leave if quarterly) following the end of the calendar quarter (March, June, September, and December).
 - a. The progress reports shall provide a brief description of the work performed, accomplishments during the (choose either) quarter/month, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
 - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
2. NRPI SURVEY FORM. At the completion of this Project, the Grantee shall complete and submit electronically a Natural Resource Project Inventory (NRPI) Project Survey Form found at <http://www.ice.ucdavis.edu/nrpi>. A hard copy shall be submitted to the Program Analyst prior to final payment.
3. DRAFT PROJECT REPORT. Prepare and submit to the Grant Manager a draft Project Report for review and comment that includes and addresses the following narrative sections and items. Additional requirements are listed in Exhibit D.
 - a. A report of all monitoring and management practices or management measures implemented, including identification of the stream reach affected by these activities. The report shall be in a format that enables the Grant Manager to find the stream reach affected by practices in a quick and efficient manner.
 - b. Describe Project performance, including benefits, successes and shortcomings, consistent with the PAEP. Enumerate specific quantifiable environmental changes and results of the Project. As appropriate, include 1) behavioral results such as the amount of management practices or measures implemented, 2) estimates or measurements of the amount of pollutants prevented from reaching surface or ground water, 3) documented changes in water quality based on monitoring, and 4) improved or protected beneficial uses.

- c. Identify lessons learned in carrying out the Project. Describe what worked and what did not work, and how similar efforts could be utilized within the Project area, as well as in other watersheds.
 - d. Describe the extent of outreach that has been conducted and if there are plans to further promote the results of the Project to achieve additional implementation.
 - e. Describe the Project's funding. Include the projected cost and actual cost of the Project, how much of the grant funds were spent, and how much funding was put into the Project from other sources. Identify funding sources that have been "leveraged" by the Project and plans for funding future activities.
 - f. Identify planned or potential follow-up activities, such as any additional steps necessary to achieve the water quality objectives, Total Maximum Daily Loads (TMDL) or local watershed plans.
 - g. Include appropriate photos and graphics.
 - h. A list of items submitted as outlined in the Table of Items for Review.
 - i. Any additional information that is deemed appropriate by the Project Director or Grant Manager.
4. FINAL PROJECT REPORT. Prepare a final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the draft final Project Report. Submit one (1) reproducible master and two (2) copies. Upload an electronic copy of the final report in pdf format to the FFAST system.
5. FINAL PROJECT SUMMARY. Prepare a brief summary of the information contained in the Final Project Report, including before and after photographs, as appropriate. Upload an electronic copy of the Final Project Summary in pdf format to the FFAST system. A hard copy shall be submitted to the Program Analyst prior to final payment.
6. The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by the State Water Board.

F. PAYMENT OF PROJECT COSTS

The Grantee agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Grantee on a timely basis.

G. AUDIT DISALLOWANCES

The Grantee agrees it shall return any audit disallowances to the State Water Board.

EXHIBIT C
GENERAL TERMS & CONDITIONS

1. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.
4. **AUDIT:** The Grantee agrees that the State Water Board, the Bureau of State Audits, the Governor of the State, the USEPA, the Office of Inspector General, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
5. **BONDING:** Where contractors are used, Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.
6. **CALFED PROGRAM CONSISTENCY:** If this Project assists in meeting any of the CALFED Bay-Delta Program Goals, this Project shall be consistent with the CALFED Programmatic Record of Decision and must be implemented, to the maximum extent possible, through local and regional programs.
7. **CEQA/NEPA:**
 - a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the State Water Board's Division of Financial Assistance (Division). Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
 - b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
8. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the

extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.

9. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
10. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
11. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.
12. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
13. **DISPUTES:** The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
14. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
15. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
16. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.

18. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, the USEPA, the Office of Inspector General, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
 - b. The Grantee, its consultants, and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
 - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
 - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
22. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
23. **NOTICE:**
- a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Board staff may observe and document such activities.

- b. The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change.
 - c. Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during implementation of the Project, the Grantee agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the Division.
 - d. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Grantee agrees to promptly notify the Division. This notification is in addition to the Grantee's obligations under the federal Endangered Species Act.
 - e. The Grantee shall notify the State Water Board at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board's representatives.
 - f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
 - g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.
24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.
25. PERMITS, CONTRACTING, AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 C.F.R. Part 31.35; Gov. Code, § 4477) www.epls.gov. The Grantee certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;

- b. Have not within a three (3)-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and,
 - d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
26. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code section 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
27. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.
28. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
 - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
 - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
 - e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,
 - f. If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
29. **RELATED LITIGATION:** Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
30. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support.

The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

31. **STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or, (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.
32. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS:** Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.
33. **STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.
34. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.
35. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
36. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the Department of Personnel Administration. These rates may be found at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.

37. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.
38. URBAN WATER MANAGEMENT PLAN: The Grantee certifies that this Project complies with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). This shall constitute a condition precedent to this Agreement.
39. USEFUL LIFE OF PROJECT: For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
40. VENUE: The State Water Board and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
41. WAIVER AND RIGHTS OF THE STATE WATER BOARD: Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.
42. WATERSHED MANAGEMENT PLAN CONSISTENCY: The Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist.
43. WITHHOLDING OF GRANT DISBURSEMENTS: The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D
SPECIAL CONDITIONS

1. The Grantee shall not use Project funds, including match funds, to engage in lobbying the federal or state governments or in litigation against the United States or the State of California. The Grantee's Chief Executive Officer agrees to provide a written statement certifying that none of the funds have been used to engage in the lobbying of the federal or state governments or in litigation against the United States or the State of California. The certification is due ninety (90) days after the end of the Project period and shall be submitted with the final report. The Grantee shall comply with 40 C.F.R. part 34, New Restrictions on Lobbying.
2. The Grantee shall comply with Small, Minority, and Women's Business (MBE/WBE) requirements as outlined in the State Water Board guidelines, including, but not limited to the following:
 - a. Include "fair share" percentages in bid documents, and
 - b. Follow the six affirmative steps stated in 40 C.F.R. sections 30.44(b), 31.36(e), 35.3145(d), or 35.6580(a), as appropriate.

If applicable, the Grantee agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334.

3. The Grantee shall comply with 40 C.F.R. part 34, New Restrictions on Lobbying, and include language of this provision in award documents for all sub-awards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly. Any recipient who makes a prohibited expenditure under 40 C.F.R. part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
4. No grant funds may be used to engage in lobbying of the federal government or in litigation against the United States.
5. The Grantee shall use recycled paper for all reports which are prepared as a part of this Agreement. The Grantee shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. § 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 C.F.R. part 247.
6. The salary rate paid to individual consultants retained by the Grantee or the Grantee's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the Grantee with the responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. As of January 1, 2009, the rate is \$587.28 per day and \$73.41 per hour, not to exceed \$153,200 per year. This rate does not include overhead. Sub-agreements with firms or individuals for services which are awarded using the procurement requirements in 40 C.F.R. parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the Grantee with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. Any reimbursement for necessary travel and per diem shall be pursuant to Exhibit C.
7. Any and all conferences, meetings, conventions, or training spaces funded in whole or in part by this Agreement shall comply with the Federal Hotel and Motel Fire Safety Act of 1990.
8. The Grantee shall fully comply with, and require contractors and subcontractors as applicable to comply with, Subpart C of 40 C.F.R. part 32, entitled "Responsibilities of Participants Regarding Transactions."

9. If this grant includes activities involving the performance or use of environmental instruments, Quality Assurance Project Plans (QAPP) must be developed for these projects. These documents must be submitted and approved by the State Water Board's QA manager before measurement activities are undertaken
10. The Grantee agrees that water quality data collected under this Agreement shall be delivered to the State Water Board such that it may be entered into the Surface Water Ambient Monitoring Program (SWAMP) database and evaluated to determine the status and trends of aquatic life in California's wadeable streams.
11. Any animal feedlot operation (AFO) that receives financial assistance pursuant to this grant shall implement a comprehensive nutrient management plan consistent with the USDA NRCS technical guidelines for Comprehensive Nutrient Management Plans.
12. The Grantee shall assure that any management practices implemented as part of this grant shall be properly maintained for the intended purposes during its life span. Operation includes the administration, management and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice. This condition applies to all sub-awards. The State retains the right to inspect a practice to ensure this condition is met, and to request a refund if it is not.
13. The Grantee certifies that this Project will implement activity/ies that contribute to reduced pollutant loads as called for in an existing TMDL or a TMDL that is currently under development.
http://www.waterboards.ca.gov/water_issues/programs/tmdl/tmdl.shtml.
14. The Grantee certifies that this Project will implement activity/ies that are part of watershed plans that address the USEPA, Region IX required watershed-based plan elements.
15. The Grantee shall ensure the continued proper operation and maintenance of all management practices that have been implemented in accordance with *National Resource Conservation Service's Field Office Technical Guides* (see Appendix B) or other appropriate standards.
16. The Grantee certifies that this Project addresses at least one of the State Water Board or Regional Water Boards' priorities as identified in Appendix G to the 2005-06 Consolidated Grants Program Guidelines.
17. The Grantee certifies that it is providing a match in the amount of at least 25% of the total amount to be spent on this Project. [remove this paragraph if this is a research project or the Grantee has obtained a Disadvantaged Community Waiver]
18. The Grantee certifies that in no event will it complete this Project later than December 31, XXXX. It acknowledges that this condition is a material condition of this grant agreement.